

EXHIBIT 2

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

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January 8, 2024

Via Electronic Mail

Caroline P. Boisvert
Axinn, Veltrop & Harkrider, LLP
90 State House Square
Hartford, CT 06103

Re: *In re Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010 (PKC)

Dear Ms. Boisvert:

I write in response to your December 22 letter and January 4 email regarding Google's discovery requests to Daily Mail. Both your letter and email seem eager to declare impasse where none exists, despite the significant progress the parties have made in recent weeks to reach agreement. We are not at impasse on any issues. We share your expressed desire to reach agreement expeditiously. We remain willing to work with Google in good faith to resolve any differences that remain.

As an initial matter, it will be far more productive for the parties to continue constructive dialogue, rather than use disingenuous rhetoric and make unreasonable demands. Google's request for a response to its December 22 letter by January 3 was unreasonable, and your January 4 assertion that Daily Mail has "delayed substantive responses" is false. On December 6, Daily Mail sent Google a letter detailing our acceptance, as of July 17, 2023, of nearly half of all Google-proposed search terms and explaining that Google's decision to jettison months of negotiation in favor of a heavily revised and expanded search term proposal was not an efficient way to bring our negotiations to resolution. In that letter Daily Mail also agreed to supplement numerous interrogatory responses and to supplement its initial disclosures. Our letter requested additional clarity regarding Google's requests for the supplementation of several other interrogatories, most of which were made for the first time nearly 7 months after Google received Daily Mail's Second Supplementary Interrogatory Responses. Google requested to meet and confer regarding that letter, and we did so on December 15. At that meet and confer, Google agreed to provide "pretty quickly" the additional clarity Daily Mail requested on December 6 regarding Google's request for supplemental interrogatory responses and to provide

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a counterproposal to Daily Mail's search term protocol. Google did not provide either until December 22, more than two weeks after receiving Daily Mail's December 6 letter. And although Google's letter was delivered at 4:57 p.m. on the Friday before Christmas, Google demanded a response "in all events by January 3."

As we stated on January 3, we have been working diligently over the holidays on this response to your December 22 letter (and the additional requests made in your January 4 email). But your demand that Daily Mail respond to Google's letter in half the number of workdays that Google itself took to respond to Daily Mail's last letter (and over a period when many Daily Mail employees were on leave for the holidays) is not reasonable or constructive. Your December 22 letter is 19 pages including appendices; this responsive letter is 21 pages. It takes a reasonable amount of time and effort, especially over the holidays, to engage in good faith with Google's extensive and shifting demands.

We suggest that it would be most conducive to our ongoing negotiations for Google not to manufacture or prematurely declare impasse in the middle of the parties' negotiations. In each of our meetings and in all of our correspondence, we have either agreed to provide Google with the additional discovery it requested, made reasonable and productive counterproposals, or agreed to consider Google's proposals for the same.

Search Terms

The parties have made significant progress negotiating search terms. As detailed further below and in the attached appendices, Daily Mail has proposed and/or accepted search terms that cover all of the RFPs that Google has identified as needing additional terms. It is not accurate or productive for Google to blame Daily Mail for any delay in finalizing search terms given Google's inaction. Google let search term negotiations lapse for several months over the summer. Meanwhile, Daily Mail proceeded with document productions pursuant to search terms proposed by Daily Mail as well as nearly half of the terms initially proposed *by Google* and accepted by Daily Mail. Prior to Google restarting search term negotiations in November 2023, Daily Mail had proposed a set of 13 broad terms and had already accepted 19 of Google's terms (one of which Google now rejects). Daily Mail was producing — and continues to produce — documents responsive to those terms.¹ To assert that "no agreement has been reached on search terms" is disingenuous. We agree that there has been no final agreement on search terms, but prior to Google's wholesale revision of its search term proposal in November, Daily Mail had

¹ It is therefore inaccurate and unproductive for you to write in your January 4 email that Daily Mail "could have and should have worked to produce documents based on those custodians and search terms, even as our negotiations continued." As you know, that is exactly what Daily Mail has done.

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accepted (i.e., agreed to run) numerous Google-proposed terms, and Google had never taken issue with Daily Mail's 13 proposed terms. In any event, Google's December 22 proposal makes clear (at 3 nn.3-4) that "finalization" is not what Google seeks — Google states that its search term and custodian proposal "is subject to further additions and/or modifications based on review of produced documents and ongoing negotiations." Daily Mail has been and is willing to consider any search term proposed by Google in good faith.

Today, Daily Mail is able to accept half of Google's additional proposed or modified terms and returns a modified version of Google's December 22, Appendix D as Appendix A to this letter. The ten remaining Google-proposed terms from the December 22 letter are overly burdensome, disproportionate to the needs of the case, and unnecessary in light of terms already agreed to by Daily Mail. Each of those ten terms returns over 50,000 documents (half of the terms each return in excess of 200,000 documents, and one term returns over 1,300,000 documents). Further, Daily Mail has already agreed to similar terms, to run search terms that will locate documents responsive to the requests that Google identifies in its justification for those terms (some of which only request "documents sufficient to show"), and/or to search for go-get documents responsive to the same.

Daily Mail's proposed search term protocol as outlined in Appendix B is for the 11 custodians identified by Daily Mail and will be run over Google's chosen relevant period of January 1, 2013 to the present. Daily Mail maintains that Google's request for documents dating back before January 1, 2013 in response to Requests Nos. 23, 39, 40, 41, 57, 58, 63, 64, 66, 69, and 71 is overbroad, unduly burdensome and not proportional to the needs of this case. Google has yet to explain why, for over 15 percent of Google's requests for production, a search beyond Google's selected decade-long "relevant time period" is proportionate to the needs of this case. If Google still seeks pre-2013 documents, please provide a justification for each request demanding documents over, in some cases, an 18-year period so that Daily Mail can properly consider those requests.

Custodians

As we have explained during our meet and confers and in our correspondence, Google has had Daily Mail's list of 11 proposed custodians since May 15, 2023. That list is comprised of the 11 custodians likely to have relevant, non-duplicative documents regarding the subject matter of this action. Those custodians include, among others: the current CEO of dmg media, who also served as the Chief Operating Officer of MailOnline from June 2013 to November 2021; the former Global Director of Platform Partnerships for dmg media from March 2018 to February 2023; the current Chief Digital Officer for MailOnline, who also served as MailOnline's Director of Programmatic from November 2014 to January 2019 and as the Director of Global Operations from January 2019 to June 2022; dmg media's current Managing

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Director of Digital and MailOnline's Commercial Director and Director of Mobile, who, among other roles, also served as the General Manager of Programmatic, Mobile, and Video; MailOnline's head of Search Engine Optimization from March 2018 to May 2022; MailOnline's former Manager of Programmatic Data & Yield Strategy and Manager of Global Commercial Data; MailOnline's current Manager of Global Commercial Data; and MailOnline's Senior Vice President of Revenue Operations & Data Strategy who, among other roles, also served as MailOnline's Director of Programmatic in the U.S. and the Senior Manager of Programmatic Platforms and Revenue Operations. Daily Mail's proposed 11 custodians are more than sufficient for the needs of this case.

After Daily Mail made its proposal, we met and conferred with Google's counsel from Wilson, Sonsini, Goodrich & Rosati on June 5, 2023, and August 9, 2023, and that same counsel sent letters to Daily Mail on July 12, 2023, and July 31, 2023. During those meetings and in that correspondence, Google never identified any deficiency in Daily Mail's custodian proposal (indeed, neither Google's July 12 letter nor its July 31 letter even mention the word "custodian"). Nor did Google ever request additional information that it claimed to need to evaluate the sufficiency of Daily Mail's custodian proposal. In light of Google's long acquiescence in (if not agreement to) Daily Mail's custodian proposal, Daily Mail has for months focused its document collection, review, and production efforts on the 11 custodians it identified nearly 8 months ago. Daily Mail has now produced over a terabyte of data and tens of thousands of documents from the files of those 11 custodians and relevant centrally stored files.

It was not until November 17 that Google's counsel from Axinn, Veltrop & Harkrider proposed to more than double the number of custodians. Google still has not explained its long delay in proposing 13 additional custodians. Daily Mail explained that it was willing to consider Google's 13 additional proposed custodians, but asked Google to provide its justification for each and why adding each custodian was proportionate to the needs of this case. *See* Ltr. from E. Maier to C. Boisvert at 2 (Dec. 6, 2023). Google has refused to do so in writing. Instead, on December 15 when we again asked Google's counsel to justify Google's requested custodians, you identified the job titles of those 13 individuals and said generally that some of them "had contact" with employees at Google or "had knowledge" relevant to the issues in this case. That elevates form over substance and does not provide enough information for Daily Mail to evaluate Google's request. Job titles and vague assertions about "contact" and "knowledge" also pale in comparison to the justification Google required of Daily Mail and other plaintiffs when they requested that Google add custodians. *See, e.g.,* Email & Attachment, W. Noss to R. McCallum (July 6, 2023) (identifying and justifying plaintiffs' priority custodians); Ex. 2 to Ltr. from

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Discovery Steering Committee to Judge Castel (November 1, 2023). As you know, Daily Mail provided fulsome justifications to Google that were also satisfactory to the Court.²

In the interest of moving our negotiations forward, we have again conferred with our client about the appropriate set of custodians necessary to locate documents responsive to Google's requests. We are confident that the 11 custodians Daily Mail proposed in May are the individuals most likely to have non-duplicative documents responsive to your requests. Those custodians are the individuals who most often interact or interacted with Google's ad tech employees and other ad tech industry participants regarding the issues in Daily Mail's complaint. By contrast, the 13 custodians Google has proposed are not or were not in roles focused on ad tech. Some of Google's proposed custodians have broad responsibilities and only rarely have visibility into ad tech issues. And when they do communicate about ad tech issues it is highly likely that one or more of Daily Mail's proposed custodians are copied on the communication. Others have communications or interactions with Google employees, but not regarding Google's ad tech products. Still others are completely irrelevant to the issues in this case — Jim Norton and Shivali Best, for instance, are Daily Mail journalists who are not involved in Daily Mail's ad tech operations.

Daily Mail remains willing to consider in good faith any additional custodians Google would like to propose, and we ask that you please provide in writing a more fulsome justification for any such custodians that you seek. For the sake of efficiency, we ask you to provide any such justifications promptly, as it goes without saying that adding new custodians (and search terms) will require additional time for document collection, review, and production pursuant to whatever search terms the parties agree upon for such new custodians.

Completion of Document Production

In your January 4 email, Google, for the first time, requested that Daily Mail complete its "productions of documents located pursuant to search terms, go-get documents, and custodial documents from relevant chat platforms by February 16, 2024." We agree it makes sense to have a target for Daily Mail to complete production of its remaining documents. We are conferring with our client about an appropriate timeline for finalizing Daily Mail's production and will convey that timeline to you soon, hopefully by the end of this week. To the extent Daily Mail and Google agree to add custodians or run additional search terms, that may affect Daily

² We note that Google has not indicated whether it has produced any documents under the Court's November 2 order, and it has refused to provide a date by which it will complete any such production.

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Mail's ability to produce responsive documents located as a result of those additions on that timeline.³

Privilege Logs

Daily Mail's privilege logs satisfy the requirements of the Court's orders. In a show of good faith, however, Daily Mail will provide email addresses for each "addressee or copyee," as Google requested in its December 7 letter.

Regarding the definition of "legal personnel," Daily Mail has not asserted privilege over any document based on the involvement of individuals who are not themselves attorneys. Please confirm that it is still Google's position that "the attorney-client privilege extends to non-attorney communications revealing or discussing legal advice or preparing to obtain legal advice." R. McCallum Letter, Nov. 30, 2023 (first citing MDL Dkt. No. 438 at 6-7; then citing EDVA Dkt. No. 274 at 2).

You also requested that Daily Mail "confirm that the documents for which Daily Mail asserts work-product privilege do indeed relate to the above-referenced litigation," (i.e., this MDL). Google's suggestion that the work product privilege is limited to documents created in relation to the litigation in which the claim of privilege is made is wrong. *See F.T.C. v. Grolier, Inc.*, 462 U.S. 19, 25 (1983) ("[T]he literal language of" Rule 26's codification of the work product doctrine "protects materials prepared for *any* litigation or trial as long as they were prepared by or for a party to the subsequent litigation."); *see also F.T.C. v. Boehringer Ingelheim Pharms., Inc.*, 778 F.3d 142, 149 (D.C. Cir. 2015) ("A document prepared as work product for one lawsuit will retain its protected status even in subsequent, unrelated litigation."). If Google's position is that the work product privilege applies only to documents related to the litigation in which the privilege is claimed, please provide applicable authority and confirm that Google has withheld documents as work product only when those documents relate to this MDL.

Interrogatories

Thank you for the additional detail you have provided regarding your request for supplementation of interrogatories 10-15, 17-21, and 23. We do not agree that Daily Mail's

³ We note Google states in its December 22 letter that it does not intend for the resolution of our current negotiations to be the end: Google has reserved its rights to make "further additions and modifications" to its search term and custodian proposal "based on review of produced documents and ongoing negotiations." Again, to the extent Google continues to make additions and modifications, that will inevitably require additional time.

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existing responses are deficient or improper.⁴ As stated in our December 6 correspondence, Google did not identify any deficiency in those responses for over two and a half months, and even then identified only four interrogatories for which it sought additional supplementation. *See* E. Maier Letter, Aug. 9, 2023.⁵ Not until November 10 did Google generally assert that Daily Mail's responses to interrogatories 10-15, 17-21, and 23 were "high level, incomplete, and refer back to Daily Mail's Complaint without elaboration." E. Yung Letter, Nov. 10, 2023. Daily Mail asked for additional specificity regarding Google's requests for supplementation, which Google has provided, to some degree, in its December 22 correspondence.

In addition to the interrogatories Daily Mail agreed to supplement in its August 9 and December 6 letter and in the interest of expediency, Daily Mail will supplement its responses to interrogatories 10-15, 17-21, and 23, to the extent possible by January 31, reserving its right to further supplementation as discovery continues.⁶

Sincerely,

/s/ Eric J. Maier

Eric J. Maier

⁴ For the avoidance of doubt, Daily Mail maintains its objections as identified in its responses and objections served February 27, 2023, and preserved in its first and second supplemental responses served on March 29 and April 21, 2023.

⁵ These were interrogatories 2, 7, 16 and 22.

⁶ Daily Mail intends to supplement its response to Google's Interrogatory No. 16 narratively, but Daily Mail reserves its right to further supplement that response by narrative or by "specifying records" from which Google can "deriv[e] or ascertain[]" the answer to its question pursuant to Rule 33(d).